

## **complaint**

Mr B is unhappy that Tradewise Insurance Company Limited ('Tradewise') hasn't paid a claim on his commercial motor insurance policy for the theft of his car.

## **background**

In August 2016, Mr B travelled outside of his local area to go out for the evening. He drove to a pub, parked on a side street near the pub and put his keys in pocket when he went in. After some time, Mr B went to a youth hostel to sleep and left his car where it was parked.

Around 8am the next morning, Mr B realised he didn't have his car keys and thought he'd lost them. He went to check on his car and it was still in the same place. He looked around for his keys and checked with the pub to see if someone had handed them in. As he couldn't find them and the pub didn't have them, Mr B decided to get on a train to collect his spare keys from his parents' address, some 75 miles away. He got a lift back to the car's location the following morning but it wasn't there. Mr B then reported the matter to the police straight away.

Mr B contacted Tradewise to report the incident several days later. Tradewise told Mr B that they'd need to see the police report in order to move things forward. There was a delay in the police providing a report as there was an ongoing investigation into the theft. The car was recovered around three months later with cosmetic damage and Mr B says that it had covered an additional 21,000 miles. The car was kept at an impound while the police continued with their investigation.

Tradewise received the police report on 6 April 2017 and enquired about some inconsistencies they had seen. Tradewise ironed out most of the concerns they had. However, they felt that it was unusual that the car had covered 21,000 miles in three months.

Tradewise ultimately wrote to Mr B to explain they weren't going to cover his claim and relied on one of their policy terms. In summary, the term said, the insured needs to take all reasonable steps to safeguard their car from accident, damage or loss. And if the car is left unattended, it needs to be locked with all windows closed and all keys removed.

Mr B complained about their decision and the delay in dealing with the claim. Tradewise sent responses to Mr B in December 2017 and January 2018. In summary they said:

- Mr B's overall claims process should have been handled better by them and there were delays and they enclosed a cheque for £250 in compensation for this.
- When Mr B was interviewed he said he didn't know the area he was in well, he strongly felt like the keys were stolen while he was in the pub, there were a number of 'shifty' characters in the pub and suspected one particular individual. So, given he suspected that he'd been pick pocketed, Tradewise felt it was unreasonable for him to leave his car where it was.
- The car had no damage to the windows or locks that would suggest an alternative point of theft.
- Mr B failed to safeguard the car by leaving it unattended to take the train home in order to collect his spare key and returning 24 hours later.

Mr B spoke to Tradewise again regarding the collection of his car. Given the condition it was in, Mr B didn't want it back. So Tradewise offered him £4,763.08 – which was the scrap value of the car. Mr B accepted this and then referred his complaint to our service.

One of our investigators upheld the complaint and suggested that Tradewise reconsider the claim as he didn't think it was fair for them to reject it. He thought the steps Mr B took to collect his spare set of keys were what you could expect a reasonable person to do.

Tradewise disagreed as they felt that Mr B could have tried several things to safeguard the car such as, reporting the keys missing to the non-emergency police line, having a locksmith gain entry to the car, or taken advice on how to secure the car. They felt a reasonable person would have at least gone back to the car within hours rather than leaving it a further 24 hours. They also highlighted that Mr B could have only lost the keys in the area he was in and they would have been at a close proximity to the car.

Tradewise asked for the complaint to be referred to an ombudsman for a final decision.

### **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I've decided to uphold this complaint and I'll now explain why.

Tradewise hasn't covered Mr B's claim because they think Mr B failed to take reasonable steps to safeguard his car. They also have concerns in respect of the fact that Mr B says the car has done around 21,000 miles since it was stolen.

The police report doesn't suggest there are any concerns that the car had been stolen or covered 21,000 miles in a three month period. And I haven't seen anything to say that the car didn't do this number of miles. So I haven't seen enough to say that there are any concerns with this aspect of the report.

In looking at whether Mr B failed to take reasonable steps to safeguard the car or not, Tradewise needs to show that he acted recklessly. To do so they need to show that he recognised there was a risk the car could be stolen, but took steps which he knew were inadequate or took no steps at all.

I note Tradewise says that Mr B failed to reasonably safeguard his car from a loss as he strongly felt his keys were stolen and said there were 'shifty' characters in the pub. But Mr B's comments were made retrospectively and after a reflection of trying to work out who could have stolen his car. So I don't think this is necessarily a reflection of his mind-set at the time of the theft.

I think Mr B was clear that he didn't know how the keys were taken. His car was parked on a side street near to the pub but not directly outside. He also said that he initially thought the keys were lost, particularly as the car was still there the next morning. So I haven't seen enough to show that Mr B recognised at the time that his keys had been stolen and there was a risk that someone would steal his car.

When Mr B couldn't find his keys, he tried to look for them. He also asked staff in the pub he was in the previous evening to see if a key was handed in. They confirmed that nothing had been handed in or found, so his next steps were to collect his spare key.

Tradewise have said that Mr B could have called the non-emergency police helpline or a locksmith. But Mr B didn't think – at the time – that there was an imminent threat that his car would be stolen. Mr B thought his keys were lost, so it was equally reasonable that he thought to go home, collect his spare keys and come back. I don't think 24 hours is an unreasonable amount of time, given that his home address was roughly 75 miles away and was getting a lift back to his car the following morning. I've considered Tradewise's point that Mr B wasn't familiar with the area he was in but I don't think a lack of familiarity with an area should have reasonably led him to think that his car would be stolen.

Given this, I don't think Tradewise can fairly rely on the clause that Mr B failed to take reasonable steps to safeguard his car to reject his claim. So, it follows that I think it was unfair for Tradewise to not cover Mr B's claim. And I think they should settle it in line with the terms of the policy.

I note Tradewise has offered Mr B £250 in compensation for the length of time they took to reach an outcome on the claim. I think Tradewise could have been more pro-active in their handling of this claim. And I think they have caused some delays. But I also think most of the delay is down to the investigations that Tradewise fairly had to undertake. I think £250 is fair compensation for the trouble and upset Mr B suffered as a result of the delays Tradewise caused.

### **my final decision**

My final decision is that I uphold Mr B's complaint. I require Tradewise Insurance Company Limited pay Mr B's claim in line with the remaining terms of the policy. They should also pay 8% simple interest per year (less tax if appropriately deducted) from when it initially declined his claim until it pays it.

Tradewise should do this within 28 days of our service confirming that Mr B has accepted our final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 29 June 2018.

Dolores Njemanze  
ombudsman